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THE STATE OF WYOMING

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July 16, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington DC 20554

Re: In the Matter of the Federal-State Joint Board on Universal Service
CC Docket No. 96-45
Wyoming Public Service Commission Petition for Reconsideration

Dear Mr. Caton:

Enclosed herewith are the original and fourteen copies of the referenced Petition for Reconsideration of the Wyoming Public Service Commission. Please file and distribute the same.

Thank you for your kind assistance with this matter.

Yours very truly,

Carrol S. Verosky

CARROL S. VEROSKY
Assistant Attorney General
Wyoming Public Service Commission

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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
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| Federal-State Joint Board on | ) | CC Docket No. 96-45 |
| Universal Service | ) | |

PETITION FOR RECONSIDERATION

By the Wyoming Public Service Commission

Dated: July 16, 1997

The Wyoming Public Service Commission (WPSC) hereby submits its Petition for Reconsideration and requests that the Federal Communications Commission (Commission) reconsider certain provisions of the FCC Report and Order released May 8, 1997 (Order) in CC Docket No. 96-45. The WPSC previously filed Initial Comments and Reply Comments in this proceeding. Additionally the WPSC has implemented its own state Universal Service Fund and is intimately familiar with the needs of Wyoming customers regarding the affordability of telecommunications service.

In this Petition for Reconsideration, the WPSC asks the Commission to reconsider three issues of its Order as follows: (1) the federal share of universal service support which the Order sets at 25% of the computed need; (2) the reluctance of the Commission to apply the universal service fund assessment to both interstate and intrastate revenues; and (3) the increases in subscriber line charges. These issues are addressed below in order of priority. The most important issue to Wyoming consumers is the maintenance of affordable telecommunications services through the Universal Service Fund.

**Federal Share of Universal Service Support**

When developing policies for the "preservation and advancement of universal services"[1] , the Commission was to adhere to the principle that the funds constitute a specific and predictable support mechanism[2]. The language at this section of the federal Telecommunications Act of 1996 states, "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." The current Order does not follow this principle, especially at paragraph 269 of the Order where the Commission concludes that "...the federal share of the difference between a carrier's forward looking cost of providing supported services and the national benchmark will be <u>25 percent</u>." (Emphasis supplied). Twenty-five percent is completely insufficient to advance or preserve universal service in a largely rural state such as Wyoming. It appears that the Commission's rationale for this decision to limit federal universal service fund support to 25% is to mirror the current 25% loop cost allocation assigned to the interstate jurisdiction through its Part 36 separations rules. If this assumption is the case then the WPSC respectfully submits that there is not a relevant comparison between the jurisdictional allocation of loop costs and the level of federal universal service fund support. If it is no more than a determination not to be responsible for a fair share of the cost of universal service; it simply runs contrary to the Act and this Commission's clear mandate.

Additionally, implementation of the Order will violate three provisions of the 1996 Act. Section 254(b)(3) of the Act calls for universal support mechanisms that will result in "...access to telecommunications and information service... that are reasonably comparable...and that are available at rates that are reasonably comparable...for similar services in urban areas". Section 254(b)(5) requires mechanisms that are "sufficient" in terms of preserving and advancing universal service. With 75% of the high costs being borne by intrastate resources, these two provisions cannot be met. The reality of this framework is that intrastate rates in need of support will be driven to even higher levels to cover an allocated share of the support mechanism.

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[1] 47 USC 254(b)

[2] 47 USC 254(b)(5)

In formal hearings the WPSC has taken evidence on forward-looking cost studies[3] showing that the deaveraged cost of providing service to many of the rural areas in Wyoming exceeds $100 per customer per month. The WPSC continues to examine these cost studies but for illustrative purposes, the monthly long-run economic cost is $100, the residential benchmark is $31[4], and if only 25% is supported by the federal fund, this leaves an amount of $51.75 per month to be supported by intrastate universal service funds. With fewer than 300,000 access lines in Wyoming, it is unthinkable to expect that the full amount of this support will be borne by an intrastate universal service fund without having a debilitating impact on local rates. The Universal Service Fund is insufficient and must be reconsidered in order to follow the spirit and letter of the federal Telecommunication Act of 1996.

It is even more and potentially damaging for a significant change in support, such as the one proposed in the Order, to occur without a transition period. When the Commission modified the cost allocations moving from subscriber plant factor ("SPF") to subscriber line usage ("SLU"), it changed the interstate portion of the allocation from as much as 85 percent down to a frozen allocator of 25 percent. This was done over an eight year transition period, giving states and companies time to absorb the changes and to modify their practices as to mitigate the impact on local customer rates. In this case the impact of the interstate funding being changed is equally as significant as the prior allocation change for some states, yet the Commission proposes to make this change with no transition period or phase-in. Local rates will be seriously impacted immediately unless the state universal service fund will be able to absorb the change. The state universal service

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[3] One recent run of the Hatfield model showed that more than 19,000 customers out of a total of 150,000 customers would have total element long-run incremental costs of $132 per month for U S WEST's service area in Wyoming.

[4] Report and Order in Docket No. 96-45, paragraph 267.

fund in Wyoming will not be able to accommodate this dramatic of a change in such a short time frame, if ever. Absent these funds , the customers of Wyoming will have to bear the costs directly.[5]

Third, as indicated above a significant increase in support funding will be required from intrastate sources that will not be comparable to like requirements in other states. This violates the principle contained in the federal Telecommunications Act of 1996 at Section 254(b)(4) wherein "All providers of telecommunications services should make an **equitable and nondiscriminatory** contribution to the preservation and advancement of universal service." (Emphasis added). With 75% of the high costs being bourne by intrastate sources, the WPSC fails to see how any of these provisions can be met in a manner reflecting legislative intent.

**Application of the Surcharge to Only Interstate Revenues**

The second issue for reconsideration is the Commission's statement at paragraph 808 where the Order stated:

> "We have decided to continue to assess carriers' contributions for the high cost and low-income support mechanisms based only upon the carriers' interstate revenues because we want to continue to work with the Joint Board on this issue to develop a unified approach to the low-income and high cost mechanisms and because we believe that in the meantime states will continue to provide for the high cost and low-income mechanisms in such a manner that the mechanisms will be sufficiently funded."

It is unclear whether this statement is directly related to the issue of the federal share of support. If Universal Service is to be sufficiently funded (which the WPSC believes is not

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[5] The Wyoming universal service fund is structured to provide support to customers whose rates are greater than 130% of the statewide average rate. However, if the statewide average rate increases, generally driven by increases in U S WEST's rates, then all rates increase prior to support being provided to individual high rate area customers.

possible based on the Order), then the combined use of interstate and intrastate revenues will provide a more appropriate funding assessment base.

The WPSC supports the additional principle of competitive neutrality added by the Commission as an underlying principle guiding its decisions in this proceeding.[6] Competitive neutrality must be clearly incorporated into the ability to receive universal service support from the fund and the obligation to contribute to the fund. Competitive neutrality requires that no contributing carrier be advantaged or disadvantaged by the contribution system established by the Commission. The best and only method to achieve this objective is to assess a carrier's contribution on interstate and intrastate retail revenues. The combined retail revenue approach is a contribution mechanism which is equitable and nondiscriminatory.

We also question the wisdom of delaying a decision on this issue of the funding base, and are especially concerned about the logic used in the above quote from paragraph 808 of the Order. While it is true that, on an intrastate level, Wyoming is working within the provisions of our state statutes to provide support to customers in areas with high rates, this is **not** justification for creating an additional burden and shifting it to the intrastate jurisdiction where it will ultimately be paid by end use customers through local rates. We agree with the need to eliminate implicit support mechanisms from intrastate services and are working to make those supports explicit. However, additional support should be made available through the federal fund, in order to keep local rates affordable. This needed support should be funded through both interstate and intrastate rates, so as to provide a large enough funding base so no carrier is disadvantaged through its provision of primarily interstate or intrastate services.

**Subscriber Line Charge**

In its Order, the Commission modifies the application of subscriber line charges to multi-line business and additional (secondary) residential lines. We see two problems with this

[6] See paragraph 47-48 of the May 8, 1997 Report and Order, Docket No. 96-45.

mandated increase. First, customers often have difficulty differentiating this federally mandated charge from the local rates under state jurisdiction and thus, this is seen as a local rate increase. Second, there are enforcement issues that will arise from the Commission's decision on this issue, and the Commission has not addressed who will be responsible to assure that the Commission's mandates on this issue are properly carried out.

The Commission has continually stated that the intent of its decisions is to avoid causing local rate increases. Increases to subscriber line charges are viewed by the customer as local rate increases, which will be the subject of heightened discussions between customers and state commissioners. It is a charge that local customers pay just for having a telephone line, whether or not they made any interstate calls or used any interstate services. The subscriber line charge appears on local telephone bills, not on long distance bills; and therefore the charge has the look and feel of a local rate increase. The WPSC objects to the charge for the above stated reasons.

Additionally, the WPSC sees the Commission's decision in this matter as administratively burdensome. There will be erroneous billings and operational difficulties associated with applying different subscriber line charges to different residential lines. For example, if a customer has a winter home in the territory of company A and a summer home in the territory of company B, which is the secondary line? Is self reporting the contemplated answer to this question? If so, then the state commissions must insure that the second line is charged the higher amount. This level of scrutinization is unworkable.

Of utmost importance to the WPSC is the decision to limit universal service fund contributions to interstate service support to 25% of those costs above the nationwide average revenue benchmark. In doing so, the Commission has arbitrarily eliminated a long standing source of contributions essential to the successful implementation of the federal statutory mandate for universal telephone service especially in those states where the population is low and the costs are high. Absent adequate support, which must be granted by this Commission, the mandate will not be fulfilled.

For the reasons stated above, the Wyoming Public Service Commission respectfully requests that the Commission grant reconsideration.

Dated: July 16, 1997

WYOMING PUBLIC SERVICE COMMISSION

Carrol S. Verosky

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## CERTIFICATE OF SERVICE

The undersigned, being the attorney for the Wyoming Public Service Commission in the above-captioned proceeding hereby certify that the within and foregoing Petition for Reconsideration of the Wyoming Public Service Commission was filed and served as required by the Federal Communications Commission therein on July 16, 1997.

WYOMING PUBLIC SERVICE COMMISSION

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